

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Damon Corey Long,

Case No. 2:24-cv-00365-JAD-MDC

Petitioner

v.

**Order Dismissing and
Closing Case**

United States of America,

Respondent

[ECF No. 1-1]

Pro se Petitioner Damon Corey Long filed a petition for writ of habeas corpus under 28 U.S.C. § 2241.¹ Long has not properly commenced this action by either paying his filing fee or filing an *in forma pauperis* (“IFP”) application.² Rather than allowing Long a chance to correct this deficiency, I dismiss Long’s petition without prejudice in light of the petition’s other defects.

Background

On May 13, 2013, Long pled guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) in case number 2:13-cr-00041-GMN-GWF.³ Long was sentenced to 92 months in prison plus 3 years of supervised release. On January 21, 2022, while Long was on supervision, the State of Nevada charged him with battery with the use of a deadly weapon resulting in bodily harm in case number C-22-362543-

¹ ECF No. 1-1.

² Under 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00 filing fee is required to initiate a habeas action in federal district court. The court may authorize an indigent prisoner to begin a habeas action without paying the fee if he or she submits an “IFP” application and includes a financial declaration and acknowledgement showing an inability to prepay fees and costs, a financial certificate, and a copy of the prisoner’s account statement for the six-month period prior to filing. 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2.

³ I take judicial notice of the docket in case number 2:13-cr-00041-GMN-GWF.

1 2.⁴ According to Long, “[t]he State agreed to no opposition to concurrent time with [his] federal
2 case.”⁵

3 Long asks this Court to transfer him from state custody to federal custody for service of
4 his sentence.⁶ In case number 2:13-cr-00041-GMN-GWF, Long filed a petition for writ of
5 habeas corpus and motion to transfer, requesting the same transfer to federal custody that he
6 requests now, but his request was denied on June 21, 2022. In that case, the Court found that
7 Long “does not have a right to compel his extradition from state to federal custody,” and because
8 “the State of Nevada has not relinquished custody of” Long, “the Court cannot order his transfer
9 to federal custody.”

10 Discussion

11 Long’s petition is plagued by numerous defects. First, Long’s petition does not name the
12 proper respondent. A habeas petition must be directed at the person having custody over the
13 prisoner, and the immediate custodian is generally the warden of the facility where the petitioner
14 is confined.⁷ Long contends that he is being held at the Southern Desert Correctional Center
15 where Ronald Oliver is the warden. Instead of naming Ronald Oliver as a respondent in this
16 action, Long incorrectly names the United States of America. Second, Long’s petition was not
17 filed on the appropriate form or in substantial compliance with the form. Rather, Long’s petition
18 is written on a motion form. Third, “[f]ederal prisoners are required to exhaust their federal
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21 ⁴ I also take judicial notice of the Eighth Judicial District Court’s docket in case number C-22-
22 362543-2.

23 ⁵ ECF No. 1-1 at 2.

⁶ *Id.* at 3.

⁷ See *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992).

1 administrative remedies prior to bringing a petition for a writ of habeas corpus in federal court.”⁸
 2 “After a district court sentences a federal offender, the Attorney General, through the [Bureau of
 3 Prisons], has the responsibility for administering the sentence.”⁹ Thus, questions concerning the
 4 execution of a sentence should be presented to the Bureau of Prisons in the first instance, and
 5 only after exhausting these administrative remedies may a petitioner seek review of the Bureau
 6 of Prison’s decision under § 2241.¹⁰ Long’s petition does not demonstrate that he has exhausted
 7 his federal administrative remedies.

8 **Conclusion**

9 IT IS THEREFORE ORDERED that the petition for writ of habeas corpus [ECF No. 1-
 10 **1] is DISMISSED without prejudice.** A certificate of appealability is denied as jurists of
 11 reason would not find the dismissal of this action on these grounds to be debatable or wrong.

12 IT IS FURTHER ORDERED that the Clerk of the Court:

- 13 • **SEND** Long a blank copy of the form petition for a writ of habeas corpus under
 14 28 U.S.C. § 2241 along with instructions **AND** a blank copy of the IFP
 15 application form for inmates along with instructions.
- 16 • **ENTER FINAL JUDGMENT** dismissing this action without prejudice.
- 17 • **CLOSE THIS CASE.**

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 22 ⁸ *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986); *see also Ward v. Chavez*, 678 F.3d
 1042, 1045 (9th Cir. 2012); *Laing v. Ashcroft*, 370 F.3d 994, 997–98 (9th Cir. 2004).

23 ⁹ *United States v. Wilson*, 503 U.S. 329, 335 (1992).

¹⁰ *See id.*

1 If Long decides to file a new 28 U.S.C. § 2241 petition on the correct form to correct the
2 defects identified in this order, he must do so in a new case.¹¹

3 Dated: February 27, 2024

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5 U.S. District Judge Jennifer A. Dorsey
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21 ¹¹ Because Long appears to challenge, at least in part, the execution of his federal sentence, a 28
22 U.S.C. § 2241 petition may be the correct vehicle for such a challenge. However, I note that
23 courts do not normally decide whether a state or the federal government has priority of custody
over the other. Rather, determining “priority of custody and service of sentence between state
and federal sovereigns is a matter of comity to be resolved by the executive branches of the two
sovereigns.” *United States v. Warren*, 610 F.2d 680, 684–85 (9th Cir. 1980).